

PROOF OF SERVICE
(FRCP 5)

I am a citizen of the United States and a resident of the State of California. I am employed in San Diego, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 4365 Executive Drive, Suite 1100, San Diego, California 92121-2128. On the date set forth below I served the documents described below in the manner described below:

1. **STIPULATION RE SECOND AMENDED PRE-TRIAL SCHEDULE; [PROPOSED] ORDER THEREON**

(BY U.S. MAIL) I am personally and readily familiar with the business practice of Cooley Godward llp for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Palo Alto, California.

(BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date. See attached Proof of Personal Service.

(BY FACSIMILE) I am personally and readily familiar with the business practice of Cooley Godward llp for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

(BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Cooley Godward llp for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

on the following part(ies) in this action:

1 WHEREAS, counsel for the parties have met and conferred and Gen-Probe has no objections
2 to a one month extension of time to the present amended pre-trial schedule.

3 The parties hereby stipulate, by and through their respective counsel, to a one month
4 extension in accordance with the following second amended pre-trial schedule:

5 1. The deadline for each party to comply with the opening disclosure report provisions
6 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure shall be extended from
7 June 22, 2001 to July 23, 2001. The deadline for any opposing reports to be exchanged shall be
8 extended from July 18, 2001 to August 20, 2001.

9 2. The deadline for any party to supplement its disclosure regarding contradictory or
10 rebuttal evidence under Rule 26(a)(2)(c) shall be extended from July 30, 2001 to August 30, 2001.

11 3. The parties are aware that the failure to comply with this section or any other
12 discovery order of the court may result in the sanctions provided for in Fed.R.Civ.P. 37 including a
13 prohibition on the introduction of experts or other designated matters in evidence.

14 4. The deadline for all fact discovery to be completed shall be extended from June 19,
15 2001 to July 19, 2001. The deadline for all expert discovery to be completed shall be extended from
16 August 15, 2001 to September 17, 2001. The parties are aware that the term "completed" means that
17 all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas
18 under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, *so that it*
19 *may be completed* by the cut-off date, taking into account that times for service, notice and response
20 as set forth in Federal Rules of Civil Procedure. The parties also understand that the court requires
21 that *all discovery conferences must be calendared within 30 days of the dispute arising.*


22 5. The deadline for hearing all other pretrial motions shall be extended from October 9,
23 2001 to November 9, 2001.

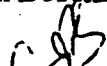
24 6. The deadline for counsel for file their Memoranda of Contentions of Fact and Law
25 and take any other action required by Local Rule 16.1(f)(3) shall be extended from November 13,
26 2001 to December 13, 2001.

1 7. The deadline for counsel to comply with the Pre-trial disclosure requirements of
2 Federal Rule of Civil Procedure 26(a)(3) shall be extended from November 12, 2001 to December
3 12, 2001.

4 8. The deadline for counsel to meet and take the action required by Local Rule
5 16.1(f)(5) shall be extended from November 26, 2001 to December 26, 2001.

6 9. The deadline for filing objections to Pre-trial disclosures shall be extended from
7 December 3, 2001 to January 3, 2002.

8 10. The deadline for preparation, service and lodging of the Proposed Final Pretrial
9 Conference Order required by Local Rule 16.1(f)(7) shall be extended from December 3, 2001 to
10 January ⁷ 7, 2002 

11 11. The Final Pretrial Conference set on the calendar of Judge Huff on December 10,
12 2001 at 10:30 a.m. shall be vacated and reset for January ¹⁴ 14, 2002 at 10:30 a.m. 

13 12. A post-trial settlement conference before a magistrate judge may be held within 30
14 days of verdict in the case.

15 13. The dates and times set forth herein will not be modified except for good cause
16 shown.

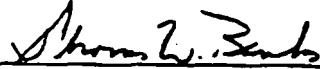
17 14. Dates and times for hearings on motions should be approved by the Court's clerk
18 before notice of hearing is served.

19 15. Briefs or memoranda in support of or in opposition to any pending motion shall not
20 exceed twenty-five (25) pages in length without leave of a district court judge. No reply
21 memorandum shall exceed ten (10) pages without leave of a district court judge. Briefs and
22 memoranda exceeding ten (1) pages in length shall have a table of contents and a table of authorities
23 cited.

1 IT IS SO STIPULATED

2
3 Date: May 30 2001

CHARLES E. LIPSEY (pro hac vice)
THOMAS W. BANKS (195006)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

4
5
6
7 By 
8 Thomas W. Banks

9 Attorneys for Defendant
10 VYSIS, INC.

11 Date: May 30, 2001

12 STEPHEN P. SWINTON (106398)
13 J. CHRISTOPHER JACZKO (149317)
14 COOLEY GODWARD LLP

15 GEN-PROBE INCORPORATED
16 R. WILLIAM BOWEN, JR. (102178)

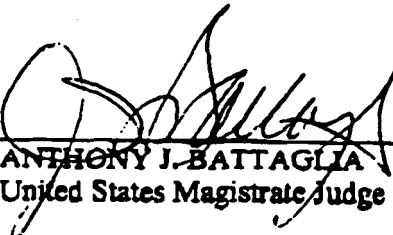
17 By 
18 J. Christopher Jaczko

19 Attorneys for Plaintiff
20 GEN-PROBE INCORPORATED

21 [PROPOSED] ORDER

22 IT IS SO ORDERED.

23 Date: 6/4/01

24 
25 ANTHONY J. BATTAGLIA
26 United States Magistrate Judge

FILED

01 JUN -4 PM 4:19

CLERK OF COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 GEN-PROBE, INCORPORATED,
12 Plaintiff,
13 v.
14 VYSIS, INC.
15 Defendant.

Case No. 99CV 2668H(AJB)
STIPULATION RE SECOND
AMENDED PRE-TRIAL SCHEDULE;
(PROPOSED) ORDER THEREON

202120-9062560

18 WHEREAS, on March 12, 2001, the Court issued an Order Re Amended Pre-Trial Schedule
19 setting the remaining pre-trial schedule:

20 WHEREAS, counsel for Vysis, Thomas Banks, informed counsel for Gen-Probe that Mr.
21 Banks presently has a lower back disc injury that may require surgery, and his physician has advised
22 him not to travel;

23 WHEREAS, Vysis wishes to take eleven additional depositions of Gen-Probe employees and
24 Gen-Probe wishes to take four additional depositions of Vysis and third party employees before the
25 close of discovery presently set for June 19, 2001;

26 WHEREAS, Vysis will have to bring into the case another lawyer from Finnegan, Henderson
27 to replace Mr. Banks; and

Case No.: 99CV2668H (AJB)

180

EXHIBIT 5

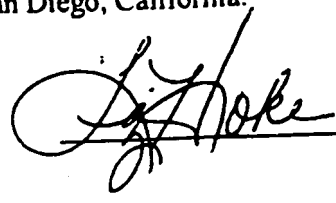
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Thomas W. Banks Esq.
Finnegan, Henderson, Farabow, et al.
700 Hansen Way
Palo Alto, CA 94304
Tel: (650) 849-6600
Fax: (650) 849-6666
Attorneys for Vysis, Inc.

John H. L'Estrange, Jr. Esq.
Wright and L'Estrange
701 B Street, Suite 1550
San Diego, CA 92101 4106 2118 3307
Tel: (619) 231-4844
Fax: (619) 231-6710

Executed on May 31, 2001, at San Diego, California.



Liz Hoke